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2009 DEC 11 P 3:34

REMOVED FROM
CLERK OF DISTRICT COURT
MAILED 11/11

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E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JF

C09 05828

No.

NOTICE OF REMOVAL OF CIVIL
ACTION FROM THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF SANTA CLARA

PPT

28 U.S.C. §§ 1332, 1441 & 1446

Holland & Knight LLP
50 California Street, 28th Floor
San Francisco, CA 94111
Tel: (415) 743-6900

Linda Auerbach Allderice [SBN 81275]
Tianjing Zhang [SBN 256759]
HOLLAND & KNIGHT LLP
50 California Street, 28th Floor
San Francisco, California 94111
Telephone: (415) 743-6900
Facsimile: (415) 743-6910
Attorneys for Defendant
Scitor Corporation, a Delaware Corporation

WAYNE LUM, an individual,

Plaintiff,

vs.

SICTOR CORPORATION, a Delaware
Corporation, and DOES 1-50

Defendants.

TO THE HONORABLE JUDGES AND CLERK OF THE COURT:

PLEASE TAKE NOTICE that defendant, Sictor Corporation (hereafter "Sictor"), pursuant to 28 U.S.C. § 1446(a), (b) and Local Rule 3-5, hereby files this notice to remove the above-captioned action to this Court, and in support of such removal states as follows:

1. *Basis for Removal.* This action may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446.

2. *Timeliness of Removal.* On November 13, 2009, Plaintiff Wayne Lum ("Plaintiff") served a complaint on Scitor's registered agent that had been filed in the Superior Court for Santa Clara County, California, styled as *Wayne Lum v. Scitor Corporation*, Case No. 109CV157214 (the "State Court Action"). This Notice of Removal is being filed within 30 days

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 San Francisco, CA 94111
 Tel: (415) 743-6900

1 of service on Scitor of the complaint in the State Court Action, and therefore is timely filed
 2 pursuant to 28 U.S.C. § 1446(b). Furthermore, this Notice of Removal is being filed within 30
 3 days of receipt by Scitor of the complaint in the State Court Action.

4 3. *Jurisdiction.* This action is a civil action of which this Court has original
 5 jurisdiction under 28 U.S.C. § 1332. Plaintiff Wayne Lum is a citizen of California. *See*
 6 Complaint ¶ 3, 7, 18 (Plaintiff admits that he is a resident of California and that he has been
 7 residing and working in California for at least 11 years if not longer.) Defendant Scitor is a
 8 Delaware corporation with its principal place of business in Virginia. Pursuant to 28 U.S.C. §
 9 1332(c)(1), Scitor is a citizen of Delaware and Virginia, and there is diversity of citizenship
 10 between the identified parties. The fictitious defendants "DOES 1-50" are not identified or
 11 named, nor is any specific conduct attributed to any of them, and each of those defendants is
 12 alleged to be the agent of Scitor. *See* Complaint ¶¶ 5, 6. For the purpose of removal, the
 13 citizenship of the "Doe" defendants is to be disregarded. 28 U.S.C. § 1441(a); *Newcombe v.*
 14 *Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998). The amount in controversy exceeds the
 15 jurisdictional prerequisite of \$75,000.00, in that Plaintiff seeks, among other damages, recovery
 16 of lost income and employment benefits that at the time of Plaintiff's departure from Scitor
 17 exceeded \$175,000.00 annually. *See* Complaint ¶¶ 19, 24, and Prayer for Relief. At the time of
 18 his departure, Plaintiff's annual salary exceeded \$135,000.00, his bonus target was \$5,000.00,
 19 and the value of his fringe benefits provided by Scitor was approximately \$37,000.00¹
 20 Additionally, Plaintiff seeks an award of compensatory and punitive damages. *See* Complaint ¶¶
 21 19, 24, and Prayer for Relief. Plaintiff's prayer for both compensatory and punitive damages
 22 satisfies the amount in controversy requirement. *See Bell v. Preferred Life Assur. Soc. of*
 23 *Montgomery, Ala.*, 320 U.S. 238 (1943) (both actual and punitive damages considered to
 24 determine the amount in controversy); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.
 25 Cal. 2001) ("It is well established that punitive damages are part of the amount in controversy in
 26

27 ¹ Plaintiff's alleged damages are the type that can reasonably be anticipated to exceed \$75,000.00 exclusive
 28 of interest and costs. *See, e.g., Turner v. Wilson Foods Corp.*, 711 F. Supp. 624, 626 (N.D. Ga. 1989); *Estevez-*
Gonzalez v. Kraft, Inc., 606 F. Supp. 127, 129 (S.D. Fla. 1985); *Baker v. Firestone Tire & Rubber Co.*, 537 F. Supp.
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1 a civil action.") Because there is diversity of citizenship between all of the identified parties and
2 the amount in controversy exceeds \$75,000.00, this court has original jurisdiction pursuant to 28
3 U.S.C. § 1332.

4 4. *Intradistrict Assignment.* Pursuant to 28 U.S.C. § 1391 and Local Rule 3-2(e),
5 venue is proper in the United States District Court for the Northern District of California, San
6 Jose Division.

7 5. *Parties Joined.* Upon information and belief, Scitor is the only defendant that has
8 been named in this action. Since the identities of the Doe defendants are unascertainable, there is
9 no need to join any other defendant for the purpose of this removal.

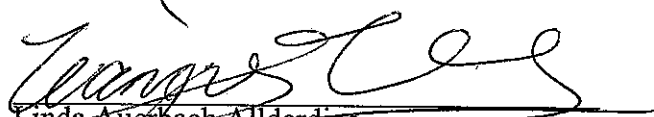
10 6. *Notice to Plaintiff and State Court.* Scitor shall promptly give notice of this
11 removal to the Plaintiff's counsel and the Superior Court for Santa Clara County in which this
12 action has been pending. A true and correct copy of the Notice of Removal from Santa Clara
13 Superior Court to United States District Court is attached as Exhibit A.

14 7. *Copies of State Court Papers.* Pursuant to 28 U.S.C. § 1446(a), copies of all
15 process, pleadings, and other papers filed in the state court are attached as Exhibit B.

16 8. *Filing Requirements.* Accompanying this notice are a Civil Cover Sheet and a
17 check in the amount of the required filing fee.

18 WHEREFORE, Scitor requests that this action now pending in the Superior Court for
19 Santa Clara County, California be removed to the United States District Court for the Northern
20 District of California, San Jose Division.

21
22 DATE: December 11, 2009


Linda Augbach Allderice
Tianjing Zhang
Attorneys for Defendant Scitor Corporation

23
24
25
26 # 9030843_v2
27
28

EXHIBIT A

Linda Auerbach Allderdice [SBN 81275]
Tianjing Zhang [SBN 256759]
HOLLAND & KNIGHT LLP
50 California Street, 28th Floor
San Francisco, California 94111
Telephone: (415) 743-6900
Facsimile: (415) 743-6910

Attorneys for Defendant
Scitor Corporation, a Delaware Corporation

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

WAYNE LUM, an individual,

No. 109CV157214

Plaintiff,

vs.

**NOTICE OF REMOVAL FROM THIS
COURT TO UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, SAN JOSE DIVISION**

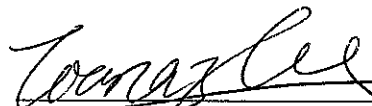
SICTOR CORPORATION, a Delaware
Corporation, and DOES 1-50

Defendants.

TO: PLAINTIFF AND HIS COUNSEL OF RECORD

Please take notice that Scitor Corporation has filed in the United States District Court for the Northern District of California, San Jose Division, a Notice of Removal regarding this action, a true and correct copy of which is attached hereto as Exhibit 1. Pursuant to 28 U.S.C. §1446(d), this action shall proceed no further unless and until it is remanded.

DATE: December 11, 2009


Linda Auerbach Allderdice
Tianjing Zhang
Attorneys for Defendant Scitor Corporation

9031139_v2

EXHIBIT 1

Holland & Knight LLP
50 California Street, 28th Floor
San Francisco, CA 94111
Tel: (415) 743-6900

Linda Auerbach Allderdice [SBN 81275]
Tianjing Zhang [SBN 256759]
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Attorneys for Defendant
Scitor Corporation, a Delaware Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WAYNE LUM, an individual,

Plaintiff,

vs.

SICTOR CORPORATION, a Delaware
Corporation, and DOES 1-50

Defendants.

No.

**NOTICE OF REMOVAL OF CIVIL
ACTION FROM THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF SANTA CLARA**

28 U.S.C. §§ 1332, 1441 & 1446

TO THE HONORABLE JUDGES AND CLERK OF THE COURT:

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1. *Basis for Removal.* This action may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446.

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a civil action.") Because there is diversity of citizenship between all of the identified parties and the amount in controversy exceeds \$75,000.00, this court has original jurisdiction pursuant to 28 U.S.C. § 1332.

4. *Intradistrict Assignment.* Pursuant to 28 U.S.C. § 1391 and Local Rule 3-2(e), venue is proper in the United States District Court for the Northern District of California, San Jose Division.

5. *Parties Joined.* Upon information and belief, Scitor is the only defendant that has been named in this action. Since the identities of the Doe defendants are unascertainable, there is no need to join any other defendant for the purpose of this removal.

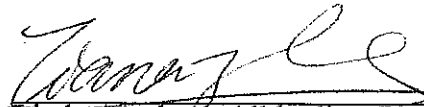
6. *Notice to Plaintiff and State Court.* Scitor shall promptly give notice of this removal to the Plaintiff's counsel and the Superior Court for Santa Clara County in which this action has been pending. A true and correct copy of the Notice of Removal from Santa Clara Superior Court to United States District Court (*minus Exhibit 1 which is this document*) is attached as Exhibit A.

7. *Copies of State Court Papers.* Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and other papers filed in the state court are attached as Exhibit B.

8. *Filing Requirements.* Accompanying this notice are a Civil Cover Sheet and a check in the amount of the required filing fee.

WHEREFORE, Scitor requests that this action now pending in the Superior Court for Santa Clara County, California be removed to the United States District Court for the Northern District of California, San Jose Division.

DATE: December 11, 2009


 Linda Auerbach Allderice
 Tianjing Zhang
 Attorneys for Defendant Scitor Corporation

9030843_v2

EXHIBIT A

Linda Auerbach Allderdice [SBN 81275]
Tianjing Zhang [SBN 256759]
HOLLAND & KNIGHT LLP
50 California Street, 28th Floor
San Francisco, California 94111
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Scitor Corporation, a Delaware Corporation

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

WAYNE LUM, an individual,

Plaintiff,

vs.

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Defendants.

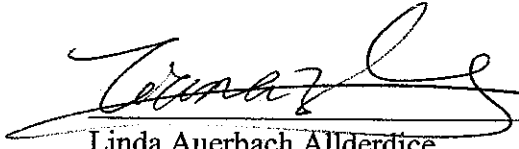
No. 109CV157214

**NOTICE OF REMOVAL FROM THIS
COURT TO UNITED STATES DISTRICT
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TO: PLAINTIFF AND HIS COUNSEL OF RECORD

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DATE: December 11, 2009


Linda Auerbach Allderdice
Tianjing Zhang
Attorneys for Defendant Scitor Corporation

9031139_v2

Holland & Knight LLP
50 California Street, 28th Floor
San Francisco, CA 94111
Tel: (415) 743-6900

EXHIBIT B



**Service of Process
Transmittal**

11/16/2009

CT Log Number 515731116

TO: Marianne Bundren
Scitor Corporation
2251 Corporate Park Drive, Suite 300
Herndon, VA 20171-

RE: Process Served in California

FOR: Scitor Corporation (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Wanye Lum, etc., Pitf. vs. Scitor Corporation, etc., et al., Dfts.
DOCUMENT(S) SERVED: Summons, Complaint, Exhibit(s), Cover Sheet, Notice, Attachment(s)
COURT/AGENCY: Santa Clara County, Superior Court, San Jose, CA
Case # 109CV157214
NATURE OF ACTION: Employee Litigation - Discrimination - Wrongful termination of employment on the
basis of Disability - September 2009
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 11/13/2009 at 14:50
APPEARANCE OR ANSWER DUE: Within 30 days after service - file written response // 04-6-2010 at 1:30 p.m. - Case
Management Conference
ATTORNEY(S) / SENDER(S): Mark C. Thomas
Brownstein Thomas LLP
180 Montgomery Street, Suite 940
San Francisco, CA 94104
415-986-1338
ACTION ITEMS: CT has retained the current log, Retain Date: 11/16/2009, Expected Purge Date:
11/21/2009
Image SOP
Email Notification, Marianne Bundren mbundren@scitor.com
SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

11/13/09
2:50p**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):****SCITOR CORPORATION, a Delaware Corporation, and DOES 1-50****YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):****WAYNE LUM, an individual**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2009 NOV 12 PM 1:42

David H. Yamasaki, Clerk of Court
Santa Clara County, CaliforniaBy _____
FLORESCA

A. FLORESCA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara Superior Court
191 North First Street, Santa Clara, CA 95113

CASE NUMBER
(Número del Caso) 109CV157214

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Brownstein Thomas, LLP - 180 Montgomery Street, Suite 940, San Francisco, CA 94104 - 415.986.1338

DATE:
(Fecha)

NOV 12 2009

Clerk, by
(Secretario)

DAVID H. YAMASAKI
Chief Executive Officer, Clerk A. FLORESCA, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☒ by personal delivery on (date): 11/13/09

ENDORSED

2009 NOV 12 PM 1:42

Deputy Clerk of the Superior Court
County of Santa Clara
By _____

1 BROWNSTEIN THOMAS, LLP
2 MARK C. THOMAS SBN: 215580
3 180 Montgomery Street, Suite 940
4 San Francisco, CA 94104
5 415-986-1338
6 415-986-1231 facsimile

7 Attorneys for Plaintiff
8 Wayne Lum

A. FLORESCA

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION

12 WAYNE LUM, an individual,

13 Plaintiff,

14 vs.

15 SCITOR CORPORATION, a Delaware
16 Corporation, and DOES 1-50,

17 Defendants.

Case No.:

109CV157214

COMPLAINT FOR DISABILITY
DISCRIMINATION; AND FAILURE TO
PROVIDE A REASONABLE
ACCOMMODATION OR ENGAGE IN
THE INTERACTIVE PROCESS

BY FAX

18
19 Plaintiff Wayne Lum (hereinafter "Plaintiff" or "Lum"), an individual, through his
20 attorneys of record, hereby alleges and complains on information and belief as follows:

21 JURISDICTION AND VENUE

22 1. The Santa Clara County Superior Court has jurisdiction in this matter due
23 to the alleged violations of the California Government Code against defendants occurred in the
24 state of California.

25 2. Venue as to each defendant is proper in this judicial district, pursuant to
26 California Code of Civil Procedure Sections 395(a) and 395.5. Each defendant either maintains
27 an office, transacts business, has an agent, or is found in the County of Santa Clara, and each
28 defendant is within the jurisdiction of this Court for the purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18) and at all relevant times, was a resident of California.

4. Defendant Scitor Corporation (hereinafter "Scitor" or "Defendant") is a corporation organized under Delaware law, and authorized to do business in California. At all relevant times Defendant has been an employer subject to suit under the California Fair Employment and Housing Act ("FEHA").

5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-50 and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants is in some manner responsible in some manner for the occurrences herein alleged and that plaintiff's injuries as herein alleged were proximately caused by the aforementioned defendants.

6. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the defendants was the agent, employee, partner, joint venturer, of each of the remaining defendants, in doing the things hereinafter alleged they were acting within the course and scope of such agency, employment, partnership, and joint venture, and, they authorized, ratified, aided, abetted, encouraged, and counseled the doing of the things hereinafter alleged.

GENERAL ALLEGATIONS

7. Lum commenced his career with Scitor in 1988. He was hired as a systems engineer, providing services to Scitor's customers. Lum excelled in his role as a systems engineer and was promoted to IT Manager, West Coast Operations in 1997. As the IT Manager, Lum supervised the day to day infrastructure operations at five geographic locations.

8. Scitor performs work for the United States government. Approximately ten percent (10%) of Lum's work requires a government security clearance. Lum first obtained his government security clearance in 1983 while working for his previous employer. Approximately every five (5) years, the government reviews the security clearance by conducting extensive background checks.

1 9. Starting in approximately 1993, the government required Lum to take a
2 polygraph to maintain his security clearance. Lum, who suffers from anxiety, had difficulty
3 passing the polygraph because the polygraph cannot differentiate between anxiety caused by
4 untruthfulness and general anxiety. The first time Lum took the polygraph, he failed the test
5 because of his anxiety. Lum was eventually able to pass the polygraph.

6 10. In or around 2001-2002, Lum was required to take another polygraph test.
7 Lum's anxiety made passing the test difficult. Lum failed the test the twice because of his
8 anxiety, but he was able to pass the polygraph exam on his third attempt.

9 11. In or around April of 2009, Lum was told he needed to take a polygraph to
10 maintain his security clearance. The polygraph exam was conducted in an extremely abusive
11 and intimidating manner, which caused Lum to suffer an anxiety attack. As a result of the
12 anxiety attack, Lum did not pass the polygraph.

13 12. In or around August of 2009, Lum was scheduled to retake the polygraph
14 exam. In the days leading up to the polygraph exam, Lum suffered from extreme anxiety, which
15 caused him to have sleepless nights. Lum's anxiety prevented him from taking the test.
16 Accordingly, Lum informed Scitor that he would not be able to take the polygraph exam because
17 of his anxiety. Lum notified Scitor that he planned to seek treatment to deal with his anxiety so
18 that he would be able to take and pass the polygraph.

19 13. The next week, Lum did seek treatment for his anxiety disorder. Lum's
20 therapist stated that with counseling he would be able to manage his anxiety disorder, and
21 eventually pass the polygraph.

22 14. In or around September 2009, Lum was told that he was scheduled to take
23 the polygraph the next day. Lum told Scitor that he could not take the polygraph the next
24 morning because of his anxiety. Lum explained that he was in treatment from a therapist to
25 manage his anxiety and expects to be able to retake the test in a few months. Scitor, however,
26 refused to accommodate Lum's disability. Despite over twenty years of dedicated service to
27 Scitor, Scitor immediately terminated Lum.

28

1 15. Lum exhausted all administrative requirements prior to filing this lawsuit.
2 A true and correct copy of Lum's Right to Sue Notice is attached hereto as Exhibit A.

3 **FIRST CAUSE OF ACTION**

4 **DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA**

5 **(Gov't Code § 12940 *et seq.*)**

6 16. Lum incorporates herein each of the foregoing paragraphs as though fully
7 set forth herein.

8 17. The California Fair Employment and Housing Act prohibits discrimination
9 against employees with disabilities. During the relevant time period, Lum suffered and/or was
10 regarded as suffering from anxiety, a physical and/or mental disability as defined by Government
11 Code Section 12926(i) and (k).

12 18. Lum was employed by Scitor from 1988 until his employment was
13 terminated in September 2009. Scitor terminated Lum's employment because of his disability in
14 violation of the Fair Employment and Housing Act.

15 19. As a result of this unlawful termination and Scitor's illegal conduct, Lum
16 has suffered and will continue to suffer loss of income, loss of earning capacity, loss of
17 employment benefits, mental and emotional distress, and other damages in an amount according
18 to proof.

19 20. In terminating Lum as described herein, Scitor acted with oppression,
20 fraud and malice, in conscious derogation of Lum's rights under applicable law. Lum is entitled
21 to punitive damages in an amount to be determined at trial, which amount would be appropriate
22 to punish or set an example of Scitor.

23 WHEREFORE, Plaintiff prays for relief as set forth below.

24 ///

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE A REASONABLE ACCOMMODATION OR ENGAGE IN
THE INTERACTIVE PROCESS

(Gov't Code § 12940 *et seq.*)

21. Lum incorporates herein each of the foregoing paragraphs as though fully set forth herein.

22. The Fair Employment and Housing Act requires employers to provide reasonable accommodations to employees with a disabilities. During the relevant time period, Lum suffered and/or was regarded as suffering from anxiety, a physical and/or mental disability as defined by Government Code Section 12926(i) and (k).

23. In or around August of 2009, Lum informed Scitor that he was suffering from anxiety, which prevented him from passing the polygraph exam. Lum informed Scitor that he was under the treatment of a therapist to manage his anxiety. Scitor refused to engage in the interactive process to determine whether Lum's disability could be accommodated. Instead, Scitor terminated Lum. Scitor's failure to engage in the interactive process violates Government Code Section 12940(n).

24. As a result of Scitor's illegal conduct, Lum has suffered and will continue to suffer loss of income, loss of earning capacity, loss of employment benefits, mental and emotional distress, and other damages in an amount according to proof.

25. In conducting as described herein, Scitor acted with oppression, fraud and malice, in conscious derogation of Lum's rights under applicable law. Lum is entitled to punitive damages in an amount to be determined at trial, which amount would be appropriate to punish or set and example of Scitor.

WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. For compensatory damages in amounts to be determined at trial;
2. For punitive damages in amount to be determined at trial;

4. For an award of attorneys' fees, costs and expenses incurred in the prosecution of this action, pursuant to Code of Civil Procedure § 1021.5, and/or any other applicable provision of law, and

BROWNSTEIN THOMAS, LLP


MARK C. THOMAS
Attorneys for Plaintiff
Wayne Lum

EXHIBIT A

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2570 NORTH FIRST STREET, SUITE 480, SAN JOSE, CA 95131
(408) 325-0344
www.dfeh.ca.gov



November 12, 2009

LUM, WAYNE
63 PARAMOUNT TERRACE
SAN FRANCISCO, CA 94118

RE: E200910G5130-00
LUM/SCITOR CORPORATION

Dear LUM, WAYNE:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 12, 2009 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

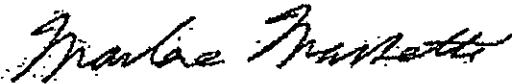
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marlene Masseti".

Marlene Masseti
District Administrator

cc: Case File

KATHY DICKMAN
HUMAN RESOURCES
SCITOR, INC.
2251 CORPORATE PARK DRIVE, SUITE 300
HERNDON, VA 20171

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # **E200910G5130-00**

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (indicate Mr. or Ms.)

LUM, WAYNE

TELEPHONE NUMBER (INCLUDE AREA CODE)

(415)935-5749

ADDRESS

63 PARAMOUNT TERRACE

CITY/STATE/ZIP

SAN FRANCISCO, CA 94118

COUNTY

SAN FRANCISCO

COUNTY CODE

075NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

SCITOR CORPORATION

TELEPHONE NUMBER (include Area Code)

(408)745-8200

ADDRESS

385 MOFFET PARK DRIVE, SUITE 210

DFEH USE ONLY

CITY/STATE/ZIP

SUNNYVALE, CA 94089

COUNTY

SANTA CLARA

COUNTY CODE

085

NO. OF EMPLOYEES/MEMBERS (if known)

1000+DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)**09/12/2009**

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on about or before
09/12/2009, the following
conduct occurred:☒ termination☐ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☐ demotion☐ denial of transfer☐ denial of equal pay☐ harassment☒ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☐ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☐ constructive discharge (forced to quit)☐ retaliation☐ impermissible non-job-related inquiry☐ other (specify) _____by **SCITOR CORPORATION**

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of:

☐ sex☐ national origin/ancestry☒ disability (physical or mental)☐ retaliation for engaging in protected☐ age☐ marital status☐ medical condition (cancer or

activity or requesting a protected

☐ religion☐ sexual orientation☐ genetic characteristic

leave or accommodation

☐ race/color☐ association☐ other (specify) _____State of what you
believe to be the
reason(s) for
discrimination**SCITOR REFUSED TO ACCOMMODATE AND TERMINATED ME BECAUSE OF MY DISABILITY.**I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit
the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act,
whichever is earlier.I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process
or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to
matters stated on my information and belief, and as to those matters I believe it to be true.Dated **11/12/2009**At **San Francisco, CA**DATE FILED: **11/12/2009**DFEH-300-030 (02/08)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark C. Thomas (SBN 215580) Brownstein Thomas, LLP 180 Montgomery Street, Suite 940 San Francisco, CA 94104 TELEPHONE NO: 415.986.1338 FAX NO: 415.986.1231 ATTORNEY FOR (Name): Plaintiff Wayne Lum		FOR COURT USE ONLY ENDORSED 2609 NOV 12 PM 1:52 DEPUTY CLERK OF THE SUPERIOR COURT COUNTY OF SANTA CLARA A. FLORESCA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara Superior Court STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Clara, CA 95113 BRANCH NAME:		
CASE NAME: Lum v. Scitor, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (15) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

BY FAX

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 2
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11.12.2009

Mark C. Thomas

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: _____

109CV157214**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must have an adult other than yourself personally deliver or mail a copy of your written response to Plaintiff's attorney, or to Plaintiff if Plaintiff has no attorney; and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1loc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable James Emerson Department: 19

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: APR 6 2010 Time: 1:30pm in Department: 19

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

CIVIL LAWSUIT NOTICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- < Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.
- < Mediation may be appropriate when:
 - < The parties want a non-adversary procedure
 - < The parties have a continuing business or personal relationship
 - < Communication problems are interfering with a resolution
 - < There is no emotional element involved
 - < The parties are interested in an injunction, consent decree, or other form of equitable relief
- < Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

PROOF OF SERVICE

Wayne Lum v. Sictor Corporation

Superior Court of California, County of Santa Clara Case No.: 109CV157214

I, BEVERLEY HUPPERT, declare and state as follows:

I am over the age of 18 years and not a party to the above-captioned action; that my business address is the law firm of Holland & Knight LLP located at 50 California Street, Suite 2800, San Francisco, California 94111-4624.

On December 11, 2009, I served the document(s) described below:

NOTICE OF REMOVAL FROM THIS COURT TO UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

☒ **(BY HAND DELIVERY)** I caused a true copy of each document(s) to be delivered by hand to the office(s) by a registered agent of process to each addressee listed below.

on each of the parties to this action at the following address:

Mark C. Thomas, Esq.
BROWNSTEIN THOMAS, LLP
180 Montgomery Street, Suite 940
San Francisco, CA 94104

Tel: (415) 986-1338

Fax: (415) 986-1231

Email: mark@brownsteinthomas.com

Attorneys for Plaintiff WAYNE LUM

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this document on December 11, 2009, at San Francisco, California.


BEVERLEY HUPPERT

EXHIBIT B



CT Corporation

**Service of Process
Transmittal**

11/16/2009

CT Log Number 515731116

TO: Marianne Bundren
Scitor Corporation
2251 Corporate Park Drive, Suite 300
Herndon, VA 20171-

RE: Process Served in California

FOR: Scitor Corporation (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Wanye Lum, etc., Pltf. vs. Scitor Corporation, etc., et al., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit(s), Cover Sheet, Notice, Attachment(s)

COURT/AGENCY: Santa Clara County, Superior Court, San Jose, CA
Case # 109CV157214

NATURE OF ACTION: Employee Litigation - Discrimination - Wrongful termination of employment on the basis of Disability - September 2009

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 11/13/2009 at 14:50

APPEARANCE OR ANSWER DUE: Within 30 days after service - file written response // 04-6-2010 at 1:30 p.m. - Case Management Conference

ATTORNEY(S) / SENDER(S): Mark C. Thomas
Brownstein Thomas LLP
180 Montgomery Street, Suite 940
San Francisco, CA 94104
415-986-1338

ACTION ITEMS: CT has retained the current log, Retain Date: 11/16/2009, Expected Purge Date: 11/21/2009
Image SOP
Email Notification, Marianne Bundren mbundren@scitor.com

SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

11/13/09
2:50P

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SCITOR CORPORATION, a Delaware Corporation, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

WAYNE LUM, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2009 NOV 12 PM 1:42

David H. Yamasaki, Clerk of the Court
County of Santa Clara

By _____

A. FLORESCA

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen este citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara Superior Court
191 North First Street, Santa Clara, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Brownstein Thomas, LLP - 180 Montgomery Street, Suite 940, San Francisco, CA 94104 - 415.986.1338

CASE NUMBER
(Número del caso) 109 CV 157214

DATE:
(Fecha) NOV 12 2009

Clerk, by DAVID H. YAMASAKI
(Secretario) Chief Executive Officer, Clerk A. FLORESCA, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Scitor Corporation, a Delaware Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

4. ☒ other (specify):
☒ by personal delivery on (date): 11/13/09

ENDORSED

2009 NOV 12 PM 1:12

DEATH PENALTY COURT
CLERK OF SUPERIOR COURT
OF SANTA CLARA COUNTY
BY _____

A. FLORESCA

BROWNSTEIN THOMAS, LLP
MARK C. THOMAS SBN: 215580
180 Montgomery Street, Suite 940
San Francisco, CA 94104
415-986-1338
415-986-1231 facsimile

Attorneys for Plaintiff
Wayne Lum

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

109CV157214

Case No.:

WAYNE LUM, an individual,

Plaintiff,

vs.

SCITOR CORPORATION, a Delaware
Corporation, and DOES 1-50,

Defendants.

COMPLAINT FOR DISABILITY
DISCRIMINATION; AND FAILURE TO
PROVIDE A REASONABLE
ACCOMMODATION OR ENGAGE IN
THE INTERACTIVE PROCESS

BY FAX

Plaintiff Wayne Lum (hereinafter "Plaintiff" or "Lum"), an individual, through his
attorneys of record, hereby alleges and complains on information and belief as follows:

JURISDICTION AND VENUE

1. The Santa Clara County Superior Court has jurisdiction in this matter due
to the alleged violations of the California Government Code against defendants occurred in the
state of California.

2. Venue as to each defendant is proper in this judicial district, pursuant to
California Code of Civil Procedure Sections 395(a) and 395.5. Each defendant either maintains
an office, transacts business, has an agent, or is found in the County of Santa Clara, and each
defendant is within the jurisdiction of this Court for the purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18) and at all relevant times, was a resident of California.

4. Defendant Scitor Corporation (hereinafter "Scitor" or "Defendant") is a corporation organized under Delaware law, and authorized to do business in California. At all relevant times Defendant has been an employer subject to suit under the California Fair Employment and Housing Act ("FEHA").

5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-50 and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants is in some manner responsible in some manner for the occurrences herein alleged and that plaintiff's injuries as herein alleged were proximately caused by the aforementioned defendants.

6. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the defendants was the agent, employee, partner, joint venturer, of each of the remaining defendants, in doing the things hereinafter alleged they were acting within the course and scope of such agency, employment, partnership, and joint venture, and, they authorized, ratified, aided, abetted, encouraged, and counseled the doing of the things hereinafter alleged.

GENERAL ALLEGATIONS

7. Lum commenced his career with Scitor in 1988. He was hired as a systems engineer, providing services to Scitor's customers. Lum excelled in his role as a systems engineer and was promoted to IT Manager, West Coast Operations in 1997. As the IT Manager, Lum supervised the day to day infrastructure operations at five geographic locations.

8. Scitor performs work for the United States government. Approximately ten percent (10%) of Lum's work requires a government security clearance. Lum first obtained his government security clearance in 1983 while working for his previous employer. Approximately every five (5) years, the government reviews the security clearance by conducting extensive background checks.

1 9. Starting in approximately 1993, the government required Lum to take a
2 polygraph to maintain his security clearance. Lum, who suffers from anxiety, had difficulty
3 passing the polygraph because the polygraph cannot differentiate between anxiety caused by
4 untruthfulness and general anxiety. The first time Lum took the polygraph, he failed the test
5 because of his anxiety. Lum was eventually able to pass the polygraph.

6 10. In or around 2001-2002, Lum was required to take another polygraph test.
7 Lum's anxiety made passing the test difficult. Lum failed the test the twice because of his
8 anxiety, but he was able to pass the polygraph exam on his third attempt.

9 11. In or around April of 2009, Lum was told he needed to take a polygraph to
10 maintain his security clearance. The polygraph exam was conducted in an extremely abusive
11 and intimidating manner, which caused Lum to suffer an anxiety attack. As a result of the
12 anxiety attack, Lum did not pass the polygraph.

13 12. In or around August of 2009, Lum was scheduled to retake the polygraph
14 exam. In the days leading up to the polygraph exam, Lum suffered from extreme anxiety, which
15 caused him to have sleepless nights. Lum's anxiety prevented him from taking the test.
16 Accordingly, Lum informed Scitor that he would not be able to take the polygraph exam because
17 of his anxiety. Lum notified Scitor that he planned to seek treatment to deal with his anxiety so
18 that he would be able to take and pass the polygraph.

19 13. The next week, Lum did seek treatment for his anxiety disorder. Lum's
20 therapist stated that with counseling he would be able to manage his anxiety disorder, and
21 eventually pass the polygraph.

22 14. In or around September 2009, Lum was told that he was scheduled to take
23 the polygraph the next day. Lum told Scitor that he could not take the polygraph the next
24 morning because of his anxiety. Lum explained that he was in treatment from a therapist to
25 manage his anxiety and expects to be able to retake the test in a few months. Scitor, however,
26 refused to accommodate Lum's disability. Despite over twenty years of dedicated service to
27 Scitor, Scitor immediately terminated Lum.
28

1 15. Lum exhausted all administrative requirements prior to filing this lawsuit.
2 A true and correct copy of Lum's Right to Sue Notice is attached hereto as Exhibit A.

3 **FIRST CAUSE OF ACTION**

4 **DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA**

5 **(Gov't Code § 12940 *et seq.*)**

6 16. Lum incorporates herein each of the foregoing paragraphs as though fully
7 set forth herein.

8 17. The California Fair Employment and Housing Act prohibits discrimination
9 against employees with disabilities. During the relevant time period, Lum suffered and/or was
10 regarded as suffering from anxiety, a physical and/or mental disability as defined by Government
11 Code Section 12926(i) and (k).

12 18. Lum was employed by Scitor from 1988 until his employment was
13 terminated in September 2009. Scitor terminated Lum's employment because of his disability in
14 violation of the Fair Employment and Housing Act.

15 19. As a result of this unlawful termination and Scitor's illegal conduct, Lum
16 has suffered and will continue to suffer loss of income, loss of earning capacity, loss of
17 employment benefits, mental and emotional distress, and other damages in an amount according
18 to proof.

19 20. In terminating Lum as described herein, Scitor acted with oppression,
20 fraud and malice, in conscious derogation of Lum's rights under applicable law. Lum is entitled
21 to punitive damages in an amount to be determined at trial, which amount would be appropriate
22 to punish or set and example of Scitor.

23 WHEREFORE, Plaintiff prays for relief as set forth below.

24 ///

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE A REASONABLE ACCOMMODATION OR ENGAGE IN
THE INTERACTIVE PROCESS

(Gov't Code § 12940 *et seq.*)

21. Lum incorporates herein each of the foregoing paragraphs as though fully set forth herein.

22. The Fair Employment and Housing Act requires employers to provide reasonable accommodations to employees with a disabilities. During the relevant time period, Lum suffered and/or was regarded as suffering from anxiety, a physical and/or mental disability as defined by Government Code Section 12926(i) and (k).

23. In or around August of 2009, Lum informed Scitor that he was suffering from anxiety, which prevented him from passing the polygraph exam. Lum informed Scitor that he was under the treatment of a therapist to manage his anxiety. Scitor refused to engage in the interactive process to determine whether Lum's disability could be accommodated. Instead, Scitor terminated Lum. Scitor's failure to engage in the interactive process violates Government Code Section 12940(n).

24. As a result of Scitor's illegal conduct, Lum has suffered and will continue to suffer loss of income, loss of earning capacity, loss of employment benefits, mental and emotional distress, and other damages in an amount according to proof.

25. In conducting as described herein, Scitor acted with oppression, fraud and malice, in conscious derogation of Lum's rights under applicable law. Lum is entitled to punitive damages in an amount to be determined at trial, which amount would be appropriate to punish or set and example of Scitor.

WHEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. For compensatory damages in amounts to be determined at trial;
2. For punitive damages in amount to be determined at trial;

4. For an award of attorneys' fees, costs and expenses incurred in the prosecution of
tion, pursuant to Code of Civil Procedure § 1021.5, and/or any other applicable provision
and

BROWNSTEIN THOMAS, LLP


MARK C. THOMAS

MARK C. THOMAS
Attorneys for Plaintiff
Wayne Lum

EXHIBIT A

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2570 NORTH FIRST STREET, SUITE 480, SAN JOSE, CA 95131
(408) 325-0344
www.dfeh.ca.gov



November 12, 2009

LUM, WAYNE
63 PARAMOUNT TERRACE
SAN FRANCISCO, CA 94118

RE: E200910G5130-00
LUM/SCITOR CORPORATION

Dear LUM, WAYNE:

NOTICE OF CASE CLOSURE

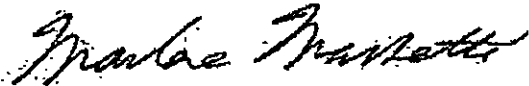
This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 12, 2009 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Marlene Masseti
District Administrator

cc: Case File

KATHY DICKMAN
HUMAN RESOURCES
SCITOR, INC.
2251 CORPORATE PARK DRIVE, SUITE 300
HERNDON, VA 20171

*** EMPLOYMENT ***

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACTDFEH # E200910G5130-00

DFEH USE ONLY

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Indicate Mr. or Ms.)

TELEPHONE NUMBER (INCLUDE AREA CODE)

LUM, WAYNE(415)935-5749

ADDRESS

63 PARAMOUNT TERRACE

CITY/STATE/ZIP

SAN FRANCISCO, CA 94118

COUNTY

SAN FRANCISCO

COUNTY CODE

075NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO
DISCRIMINATED AGAINST ME:

NAME

TELEPHONE NUMBER (Include Area Code)

SCITOR CORPORATION(408)745-8200

ADDRESS

DFEH USE ONLY

385 MOFFET PARK DRIVE, SUITE 210

CITY/STATE/ZIP

SUNNYVALE, CA 94089

COUNTY

SANTA CLARA

COUNTY CODE

085

NO. OF EMPLOYEES/MEMBERS (if known)

1000+DATE MOST RECENT OR CONTINUING DISCRIMINATION
TOOK PLACE (month, day, and year)09/12/2009

RESPONDENT CODE

00

THE PARTICULARS ARE:

I allege that on about or before
09/12/2009, the following
conduct occurred:☒ termination☐ denial of employment☐ denial of family or medical leave☐ laid off☐ denial of promotion☐ denial of pregnancy leave☐ demotion☐ denial of transfer☐ denial of equal pay☐ harassment☒ denial of accommodation☐ denial of right to wear pants☐ genetic characteristics testing☐ failure to prevent discrimination or retaliation☐ denial of pregnancy accommodation☐ constructive discharge (forced to quit)☐ retaliation☐ impermissible non-job-related inquiry☐ other (specify) _____by SCITOR CORPORATION

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of :

☐ sex☐ national origin/ancestry☒ disability (physical or mental)☐ retaliation for engaging in protected☐ age☐ marital status☐ medical condition (cancer or

activity or requesting a protected

☐ religion☐ sexual orientation☐ genetic characteristic

leave or accommodation

☐ race/color☐ association☐ other (specify) _____State of what you
believe to be the
reason(s) for
discriminationSCITOR REFUSED TO ACCOMMODATE AND TERMINATED ME BECAUSE OF MY DISABILITY.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 11/12/2009At San Francisco, CADATE FILED: 11/12/2009DFEH-300-030 (02/08)
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark C. Thomas (SBN 215580) Brownstein Thomas, LLP 180 Montgomery Street, Suite 940 San Francisco, CA 94104 TELEPHONE NO: 415.986.1338 FAX NO: 415.986.1231 ATTORNEY FOR (Name): Plaintiff Wayne Lum		FOR COURT USE ONLY ENDORSED 2009 NOV 12 PM 1:52 DEPUTY CLERK OF THE COURT COUNTY OF SANTA CLARA A. FLORESCA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara Superior Court STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Clara, CA 95113 BRANCH NAME:		
CASE NAME: Lum v. Scitor, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filled with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 109CV157214 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (15) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (25) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

BY FAX

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 2
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11.12.2009

Mark C. Thomas

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: _____

109CV157214**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must have an adult other than yourself personally deliver or mail a copy of your written response to Plaintiff's attorney, or to Plaintiff if Plaintiff has no attorney; and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable James Emerson Department: 19

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: APR 6 2010 Time: 1:30pm In Department: 19

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

CIVIL LAWSUIT NOTICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

< Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

< Mediation may be appropriate when:

- < The parties want a non-adversary procedure
- < The parties have a continuing business or personal relationship
- < Communication problems are interfering with a resolution
- < There is an emotional element involved
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

< Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-OVER-

< Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:
Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

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6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 WAYNE LUM, an individual,

12 Plaintiff,

13 vs.
14

15 SICTOR CORPORATION, a Delaware
Corporation, and DOES 1-50

16 Defendants.
17

No.

PROOF OF SERVICE

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PROOF OF SERVICE

Wayne Lum v. Sictor Corporation

Superior Court of California, County of Santa Clara Case No.: 109CV157214

I, BEVERLEY HUPPERT, declare and state as follows:

I am over the age of 18 years and not a party to the above-captioned action; that my business address is the law firm of Holland & Knight LLP located at 50 California Street, Suite 2800, San Francisco, California 94111-4624.

On December 11, 2009, I served the document(s) described below:

**NOTICE OF REMOVAL OF CIVIL ACTION FROM THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF SANTA CLARA**

☒ **(BY HAND DELIVERY)** I caused a true copy of each document(s) to be delivered by hand to the office(s) by a registered agent of process to each addressee listed below.

on each of the parties to this action at the following address:

Mark C. Thomas, Esq.
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Attorneys for Plaintiff WAYNE LUM

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this document on December 11, 2009, at San Francisco, California.


BEVERLEY HUPPERT

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